

APPENDIX M

JAMES BRANDON BLACK, DECEMBER 5, 2005

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK N. HERNANDEZ, JR.,

Plaintiff,

vs.

Case No. 04-C-7844

MIDLAND CREDIT MANAGEMENT, INC.;
MRC RECEIVABLES CORPORATION; and
ENCORE CAPITAL GROUP, INC.,
formerly MCM CAPITAL GROUP, INC.,

Defendants.

DEPOSITION OF JAMES BRANDON BLACK

San Diego, California

Monday, December 5, 2005

Reported by:

FRAUKE KUO

CSR No. 6283

JOB No. CH173709B/SD41454B

JAMES BRANDON BLACK, DECEMBER 5, 2005

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK N. HERNANDEZ, JR.,

Plaintiff,

vs.

MIDLAND CREDIT MANAGEMENT, INC.;
MRC RECEIVABLES CORPORATION; and
ENCORE CAPITAL GROUP, INC.,
formerly MCM CAPITAL GROUP, INC.,

Defendants.

Case No. 04-C-7844

Deposition of JAMES BRANDON BLACK,

taken on behalf of Plaintiff, at 402 West
Broadway, Suite 700 San Diego, California,
beginning at 1:36 p.m. and ending at
3:40 p.m., Monday, December 5, 2005,
before FRAUKE KUO, Certified Shorthand
Reporter No. 62833.

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 APPEARANCES:

2
3 For Plaintiff:

4 EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
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11 For Defendants:

12 DYKEMA GOSSET ROOKS PITTS, PLLC
13 BY: JAMES W. McCONKEY
14 Attorney at Law
15 10 South Wacker Drive
16 Suite 2300
17 Chicago, Illinois 60606
18 (312) 739-4200

19 Also Present:

20 BRIAN L. FRARY
21 MCM Corporate Counsel
22
23
24
25

JAMES BRANDON BLACK, DECEMBER 5, 2005

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5 BY MR. McCONKEY --

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10 Earnings Conference Call - 10/28/04

11 4 Transcript of Encore Capital Group 25

12 Earnings Conference Call - 3/3/05

13 5 Form 10-K, pages 2 through 74 32

14 6 Servicing Agreement, MCM 000024-48 40

15 EXHIBITS FOR REFERENCE

16 2 Letter to Consumer (3 pages) 35

17 INFORMATION REQUESTED

18 Page Line

19 (None)

20 INSTRUCTION NOT TO ANSWER

21 Page Line

22 (None)

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 San Diego, California, Monday, December 5, 2005,

2 1:36 p.m. - 3:40 p.m.

3
4 JAMES BRANDON BLACK,

5 having been first duly sworn, was examined and testified
6 as follows:

7
8 MR. LATTURNER: This is the deposition of James
9 Brandon Black. And as with the one this morning, we are
10 taking it by telephone from Chicago. And just a reminder
11 that there can be no talking to the witness while a
12 question is pending; and if there is, I would like the
13 court reporter to inform me.

14 BY MR. LATTURNER:

15 Q Could you state your name, please.

16 A James Brandon Black.

17 Q And how old are you, sir?

18 A I am 38.

19 Q What's the highest level of education you have
20 obtained?

21 A I've got a Master's degree.

22 Q In what?

23 A It's an MBA.

24 Q From where?

25 A From the University of Richmond.

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 Encore?

2 A I'm a director of Encore.

3 Q Do you have any other position with Encore other
4 than CEO and director?

5 A I'm the president -- My title is president and
6 chief executive officer.

7 Q Okay. Are you an officer or director of MCM?

8 A I believe that I am a -- an officer of MCM.

9 Q Do you know which office?

10 A I believe it's president, chief executive
11 officer, but --

12 Q How about a director?

13 A I don't know.

14 Q Okay. Are you familiar with a company called MRC
15 Receivables?

16 A I am.

17 Q Do you have any position with MRC Receivables?

18 A I don't know.

19 Q Okay. How long have you been president and CEO
20 of Encore?

21 A Since October 1st of 2005.

22 Q And who do you report to?

23 A I report to the Board.

24 Q And as president and CEO of Midland Credit
25 Management, who do you report to?

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 A I'm not sure there is a formal reporting
2 structure. I think ultimately -- the activities that I am
3 responsible for ultimately are governed by the Board.

4 Q By the Board of Encore?

5 A Correct.

6 Q What was your position prior to October 1st,
7 2005?

8 A I was president and chief operating officer.

9 Q Of what company?

10 A Of Encore Capital Group.

11 Q Did you have any position with Midland Credit
12 Management?

13 A I don't know.

14 Q And how about MRC Receivables?

15 A I don't know.

16 Q How long were you president and chief operating
17 officer of Enron -- Encore?

18 MR. McCONKEY: I will object to that.

19 MR. LATTURNER: I have made this mistake before,
20 Mr. Black. I apologize.

21 THE WITNESS: That's fine. I have been the chief
22 operating officer since May of 2000. I've been the
23 president, I believe, since October 2004.

24 BY MR. LATTURNER:

25 Q When you were president and chief operating

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 officer of Encore, who did you report to?

2 A I reported to Carl Gregory.

3 Q And what was his position?

4 A Carl Gregory was the CEO.

5 Q Okay. And prior to 1904, when you were just
6 chief operating officer of Enron, who did you report to?

7 MR. McCONKEY: Jim, you said, "prior to 1904." And
8 you also said "Enron" again, so I have to object.

9 MR. LATTURNER: Oh, boy. Sorry about that.

10 MR. McCONKEY: That's all right.

11 MR. LATTURNER: Okay.

12 MR. LATTURNER:

13 Q How about prior to 2004, when you were just COO
14 of Encore, who did you report to?

15 A I also reported to Carl Gregory.

16 Q Did your duties change when you became president
17 of Encore?

18 A The only thing that changed when I became
19 president is that I added two additional direct reports.

20 Q What were the two additional direct reports?

21 A The general counsel and the chief information
22 officer.

23 Q So you report -- Oh, they reported to you?

24 A Correct.

25 Q Okay.

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 A I had the same -- I took on additional
2 responsibilities of having those two groups report to me.

3 Q Okay. What were those two groups again?

4 A Our chief information officer and our general
5 counsel.

6 Q And what additional duties did you get on October
7 1st, 2005?

8 A I essentially gained full responsibility for
9 managing all the external relationships for the company,
10 which include our lenders, our shareholders, and our
11 analysts.

12 Q Okay. Do you know why your paycheck comes from
13 Midland Credit Management?

14 A Midland Credit Management is the operating
15 subsidiary of the company.

16 Q What do you mean, "the operating subsidiary"?

17 A Encore is a holding company that has operating
18 subsidiaries and purchasing entities, as well as monies in
19 other companies, but it's the operating subsidiary where
20 all of our collection activities emanate from.

21 Q Okay. What's the business of Encore?

22 A Encore has two businesses. The first business is
23 the acquisition of consumer receivables, and the other is
24 the management of consumers -- secured consumers who file
25 bankruptcy. And we manage that on a servicing basis for

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 large credit issuers.

2 Q Okay. What is the business of MRC Receivables?

3 A MRC Receivables is a purchasing entity. So it's
4 the -- it's one entity that purchased receivables over a
5 period for the company.

6 Q And which -- what is the company?

7 A The company is -- I am sorry. Ask the question
8 differently.

9 Q Pardon?

10 A You said, "What is the company?" I'm not sure I
11 understand.

12 Q You said it's the purchasing entity "for the
13 company."

14 A So it's a purchasing entity for Encore.

15 Q Okay. And what is the business of MCM, Midland
16 Credit Management?

17 A Midland Credit Management is the collection
18 entity -- or licensed collection entity that collects on
19 behalf of the purchasing entities.

20 Q Does Encore have more purchasing entities than
21 MRC Receivables?

22 A It does.

23 Q How many more?

24 A I can't give you the exact number. I don't know
25 the exact number.

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 Q Would Midland Funding NCC-1 be one of them?

2 A I believe so, yes.

3 Q And how about Midland Funding NCC-2?

4 A I believe so, yes.

5 Q And do they do the same things that MRC
6 Receivables does?

7 A In the sense that they acquire assets, yes.

8 Q What assets do they acquire?

9 A In a large enough sense, they acquire charged-off
10 unsecured consumer receivables.

11 Q Okay. And that's what MRC does also; correct?

12 A That is correct.

13 Q And that's entirely different from secured
14 consumers who file bankruptcy; is that correct?

15 A That is correct.

16 Q How many employees does Encore have?

17 A All of the entities under Encore, so the
18 collection subsidiary plus the bankruptcy Group, I think
19 we have right around 900 employees across all of the
20 entities.

21 Q Okay. That's everyone. How many get their
22 paycheck from Encore?

23 A I don't believe any do.

24 Q How many are employed by MRC Receivables? How
25 many persons are employed by MRC Receivables?

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 A I don't believe there are any.

2 Q Okay. And would that be the same for Midland
3 Funding NCC-1 and -2?

4 A I believe so, yes.

5 Q Okay. And how many that are employed by MCM?

6 A I believe it's right around 650.

7 Q Does Encore have a separate subsidiary for the
8 managing secured consumers who filed bankruptcy?

9 A Yeah, it does.

10 Q And what's the name of that?

11 A Ascension Capital Group.

12 Q Can you spell that?

13 A A-s-c-e-n-s-i-o-n Capital Group.

14 Q Capital Group. And that has the other 250
15 employees; is that correct?

16 A It does.

17 Q Okay. Are separate balance sheets prepared for
18 MCM quarterly or yearly?

19 A I don't know.

20 Q How about for MRC?

21 A I don't know.

22 Q Are separate income statements prepared for MCM
23 quarterly or yearly?

24 A I don't know.

25 Q And the same question for MRC.

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 go ahead.

2 MR. LATTURNER: All right.

3 MR. LATTURNER:

4 Q Mr. Black, were you the architect of many
5 analytical procedures?

6 MR. McCONKEY: Object to form.

7 THE WITNESS: What I would say, is I was somebody who
8 championed the use of information to help make decisions
9 around what collection strategies to use throughout the
10 ownership period the company owned that account.

11 MR. LATTURNER: Okay.

12 MR. LATTURNER:

13 Q Does that also include the collection processes
14 that's referred to here?

15 MR. McCONKEY: Same objection.

16 THE WITNESS: Again, since I was responsible for all
17 of the collection activities, you know, I would say that
18 would include collection processes.

19 MR. LATTURNER: Okay.

20 BY MR. LATTURNER:

21 Q Was one of the collection processes the Capital
22 One balance transfer program?

23 MR. McCONKEY: Object to the form of the question. It
24 also calls for a legal conclusion. Subject to that --

25 MR. LATTURNER: It doesn't call for a legal

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 conclusion.

2 MR. McCONKEY: That's your whole theory in the case,
3 Jim. That's why I am making that objection.

4 BY MR. LATTURNER:

5 Q Your answer, Mr. Black?

6 A I was responsible for the people who managed the
7 Capital One relationship. So if that -- So the answer is
8 yes.

9 Q Can you explain what that program is, how it
10 works?

11 A Sure. That program is an opportunity for
12 consumers, who have limited to no access to credit, to get
13 a new credit card in their name at what I believe to be
14 more than attractive terms, potentially industry-leading
15 terms, and at the same time simultaneously pay off their
16 debt to Encore or to Midland Credit Management.

17 Q At the top of page 3, you use the term "customer
18 level analytics." Can you define customer level analytics
19 for me.

20 A Sure. As a company, we try to determine the
21 capability of a consumer to repay their assets. And, you
22 know, when we make that determination, that will determine
23 which collection strategy we would use throughout the life
24 of the ownership period.

25 Q What is the Stephens -- What is Stephens, Inc.?

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 between a sale and an account balance transfer is?

2 A A sale is when we select a pool of accounts to be
3 sold to a prospective buyer, and account balance transfer
4 is when a consumer elects to transfer their balance to a
5 new credit card, which triggers a payment to the company:
6 So in one case we make the election and in the other case
7 the consumer makes the election.

8 Q Okay. Would it be fair to say that, in a sale,
9 after the sale the consumer still owes the debt that you
10 have been collecting on but now owes it to another
11 company?

12 A Yes.

13 Q And would it be fair to say that -- with an
14 account balance transfer, that the debt that Midland was
15 collecting on has been paid off, but a totally new debt
16 has been incurred with another creditor?

17 A Yes.

18 Q Now, you say on the account balance transfer the
19 customer gets to choose. How is that choice presented to
20 the consumer or customer?

21 A The customer will generally receive a letter
22 letting them know that this is an opportunity that they
23 could choose to take advantage of, and they can either
24 choose to or not.

25 Q Okay. Who does that letter come from?

JAMES BRANDON BLACK, DECEMBER 5, 2005

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1 A That letter comes from -- from -- from Midland.

2 Q Oh, okay.

3 MR. LATTURNER: Could you show him Exhibit No. 2 from
4 this morning, please.

5 (The reporter complied.)

6 BY MR. LATTURNER:

7 Q Is Exhibit No. 2 the letter you have just been
8 referring to?

9 A Exhibit 2 appears to be an example of the letter
10 I was speaking of. But there have been -- there are
11 different letters, and I don't review all of them
12 individually. So it appears to be an example, but I'm
13 just looking at it now for the first time.

14 Q Okay. So it goes out over your name; correct?

15 A It does.

16 Q Does Capital One have to approve who gets this
17 letter -- or this offer?

18 A Generally, how the program works is that we will
19 select the population of accounts of consumers who we
20 think may be eligible, and then Capital One will solicit
21 all of them unless they believe for some reason the
22 customer is not eligible to receive the offer.

23 Q So Capital One can turn down some of the people
24 in the Group before the letter is sent out?

25 A Right.

APPENDIX N

LISA STEEN, NOVEMBER 17, 2005

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK N. HERNANDEZ, JR.,

Plaintiff,

vs.

MIDLAND CREDIT MANAGEMENT, INC.;
MRC RECEIVABLES CORPORATION; and
ENCORE CAPITAL GROUP, INC.,
formerly MCM CAPITAL GROUP, INC.,

Defendants.

CASE NO. 04-C-7844

DEPOSITION OF LISA STEEN

San Diego, California

Thursday, November 17, 2005

Reported by:
Debby M. Gladish, RPR
CSR No. 9803
Job No. 172896A

ESQUIRE DEPOSITION SERVICES - CHICAGO
312.782.8087 800.708.8087 FAX: 312.704.4950

a309fd39-7a03-4af4-b120-9167692a9cb8

LISA STEEN, NOVEMBER 17, 2005

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3 _____)
FRANK N. HERNANDEZ, JR.,)

CASE NO. 04-C-7844

4)
Plaintiff,)

5)
vs.)

6)
MIDLAND CREDIT MANAGEMENT, INC.;)
7 MRC RECEIVABLES CORPORATION; and)
ENCORE CAPITAL GROUP, INC.,)
8 formerly MCM CAPITAL GROUP, INC.,)

9)
Defendants.)
10 _____)

11
12
13
14
15
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17
18
19 Deposition of LISA STEEN, taken on behalf
20 of Defendants, at 402 West Broadway, Suite 700, San
21 Diego, California, beginning at 9:30 a.m. and ending
22 at 11:04 a.m. on Thursday, November 17, 2005, before
23 DEBBY M. GLADISH, Certified Shorthand Reporter No.
24 9803.
25

LISA STEEN, NOVEMBER 17, 2005

Page 3

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8 (312) 627-2169

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11 BY: JAMES O. LATTURNER, ESQ.
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13 18th Floor
14 Chicago, Illinois 60603
15 (312) 739-4200

16 ALSO PRESENT: BRIAN L. FRARY
17
18
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LISA STEEN, NOVEMBER 17, 2005

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WITNESS

EXAMINATION

LISA STEEN

BY: MR. LATTURNER

EXHIBITS:

MARKED

1 Document entitled "R2K Collection
Detail"

20

2 Letter dated 4-20-2004 from MCM to
Larry Mitchell

14

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LISA STEEN, NOVEMBER 17, 2005

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1 SAN DIEGO, CALIFORNIA; THURSDAY, NOVEMBER 17, 2005

2 9:30 A.M.

3 --oOo--

4
5 LISA STEEN,

6 having been sworn, testified as follows:

7
8 EXAMINATION

9 BY MR. LATTURNER:

10 Q. Could you state your name, please.

11 A. Lisa Steen.

12 Q. Spell Steen.

13 A. S-t-e-e-n.

14 Q. How old are you?

15 A. Forty.

16 Q. What's the highest level of education you
17 have attained?

18 A. A master's.

19 Q. Master's in what?

20 A. Business administration.

21 Q. From where?

22 A. University of Phoenix.

23 Q. And when?

24 A. 2000.

25 Q. Where was your undergraduate degree?

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LISA STEEN, NOVEMBER 17, 2005

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1 were a few, and you started to talk about some of
2 them. And we've talked about the call center, and
3 we've talked about the GLB notice, which we just
4 went through. And now I'm asking if there is
5 anything else?

6 MR. McCONKEY: If you can recall. I think
7 you said four.

8 THE WITNESS: I was going to say --

9 MR. McCONKEY: I think she said those are
10 the ones that she can recall.

11 BY MR. LATTURNER:

12 Q. Can you recall any others?

13 A. My work was project based, so I worked on a
14 variety of projects.

15 Q. Okay. Are you familiar with the Capital
16 One balance transfer program?

17 A. Yes.

18 Q. Can you tell me what the Capital One
19 balance transfer program is?

20 MR. McCONKEY: Object to foundation.

21 Go ahead.

22 THE WITNESS: It's a -- it's a program to
23 offer the consumer an alternative way to settle
24 their debt through balance transferring the amount
25 that they owe to Midland onto a new credit card.

LISA STEEN, NOVEMBER 17, 2005

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1 regarding each consumer other than the consumer's
2 name?

3 A. I don't know the specific details of all
4 the fields that are in the file.

5 Q. Do you know some of them?

6 A. Obviously the name, the address that we
7 have for the account, account balance.

8 Q. Anything else?

9 A. Those are the only ones I know for sure.

10 MR. McCONKEY: Can we take a two-minute
11 break?

12 MR. LATTURNER: Okay.

13 (Recess.)

14 BY MR. LATTURNER:

15 Q. Anything else?

16 A. Those are the ones that I know of for sure.

17 Q. Is there any record made on the consumer
18 files such as Exhibit No. 1 when -- if that
19 consumer's name has been offered to Capital One for
20 the balance transfer program?

21 MR. McCONKEY: Objection; foundation.

22 If you know.

23 THE WITNESS: Okay. When the -- when the
24 offer is mailed, we notate the account that the
25 account is eligible for a balance transfer.

LISA STEEN, NOVEMBER 17, 2005

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1 I think there is multiple reasons for that, that
2 account -- that is notated on our system in that
3 same file, that the account is ineligible.

4 Q. So every person whose name is on the file
5 of the names sent to Capital One will have a
6 notation someplace that either the credit card offer
7 was or was not sent; is that correct?

8 A. It would have a notation whether the
9 account was eligible or ineligible.

10 Q. Who determines the eligibility or
11 ineligibility?

12 A. I think that's a joint effort.

13 Q. But this is after the names have been sent
14 to Capital One; is that correct?

15 A. It's still a joint effort.

16 Q. Okay.

17 A. If we have a change in status, we notify
18 them.

19 Q. Fine. So, then, there is a notation in the
20 file if they were determined to be ineligible for
21 any reason; is that correct?

22 A. Yes.

23 Q. What file is that?

24 A. It's in the CC assign when it returned, and
25 I think there is some files specific to the Capital

LISA STEEN, NOVEMBER 17, 2005

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1 BY MR. LATTURNER:

2 Q. Is the Capital One balance transfer program
3 still in effect?

4 A. Yes.

5 Q. And have there been any changes to it since
6 it was instituted?

7 MR. McCONKEY: Foundation.

8 If you know.

9 THE WITNESS: Yes.

10 BY MR. LATTURNER:

11 Q. What were the changes?

12 A. The main one that I'm aware of has to do
13 with getting -- Midland used to get paid their
14 commission on the account when the consumer
15 responded to the offer. Now, the consumer has to
16 respond to the offer and make one payment.

17 Q. When did that change go into effect?

18 A. I don't know.

19 Q. Before you became director of marketing?

20 A. I don't know specifically.

21 Q. What is the commission that you referred
22 to?

23 A. That's our -- that's our payment from
24 Capital One on the account when the consumer
25 transfers their balance.

APPENDIX O

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK N. HERNANDEZ, JR.,)
)
Plaintiff,)
)
vs.) CASE NO. 04 C 7844
)
MIDLAND CREDIT MANAGEMENT, INC.;)
MRC RECEIVABLES CORPORATION; and)
ENCORE CAPITAL GROUP, INC.,)
formerly MCM CAPITAL GROUP, INC.,)
)
Defendants.)
)

(Complete caption information on page 2.)

THE DEPOSITION OF GREGORY G. MEREDITH
Taken on Wednesday, September 28, 2005
At 1:30 p.m.
At 2929 North Central Avenue, Suite 1680
Phoenix, Arizona

REPORTED BY: MICHAEL H. DIPPEL, RPR
Arizona CR No. 50716
Nevada CCR No. 701
California CSR No. 9409

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

Page 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 FRANK N. HERNANDEZ, JR.,)

5 Plaintiff,)

6 vs.)

CASE NO. 04 C 7844

7 MIDLAND CREDIT MANAGEMENT, INC.;)
8 MRC RECEIVABLES CORPORATION; and)
9 ENCORE CAPITAL GROUP, INC.,)
10 formerly MCM CAPITAL GROUP, INC.,)

11 Defendants.)

12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF WISCONSIN
14 MILWAUKEE DIVISION

15 LARRY E. MITCHELL,)

16 Plaintiff,)

17 vs.)

18 MIDLAND CREDIT MANAGEMENT, INC.;)
19 MRC RECEIVABLES CORPORATION; and)
20 ENCORE CAPITAL GROUP, INC.,)
21 formerly MCM CAPITAL GROUP, INC.,)

22 Defendants.)

23 DEPOSITION OF GREGORY G. MEREDITH taken in the
24 above-referenced matters at 2929 North Central Avenue,
25 Suite 1680, Phoenix, Arizona, on Wednesday,
 September 28, 2005, at 1:30 p.m., before
 Michael H. Dippel, Registered Professional Reporter and
 Certified Reporter No. 50716 in and for the State of
 Arizona.

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

Page 3

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GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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I N D E X

WITNESS:

GREGORY G. MEREDITH

EXAMINATION

PAGE

By Mr. Lattuner

5

INDEX TO EXHIBITS

EXHIBITS

MARKED

1 Stipulation and Order Concerning
Privileged Communications

*

2 Letter dated April 20, 2004, to
Larry Mitchell with accompanying
Privacy Notice

*

3 Protective Order
(Retained by Counsel.)

*

4 Documents Bates stamped P-MCM 00001
through P-MCM 00019

39

* Exhibit previously marked at the deposition
Brian L. Frary taken September 27, 2005

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GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 GREGORY G. MEREDITH,
2 was called as a witness and, having been
3 first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. LATTURNER:

6 Q. Will you state your name, please.

7 A. Gregory G. Meredith.

8 MR. McCONKEY: And, Jim, if I could just make
9 a record, as I did yesterday, of the fact that this
10 deposition is proceeding pursuant to a stipulation that
11 the parties have agreed to relative to
12 attorney-client-privileged communications. That
13 particular stipulation has been entered as an order by
14 Judge Rebecca Pallmeyer in the Hernandez case --
15 although it's my understanding that, Mr. Latturner, you
16 agreed that this is binding, as well, on the Mitchell
17 case?

18 MR. LATTURNER: Correct.

19 MR. McCONKEY: That order was entered by
20 Judge Pallmeyer on September 21, 2005, and, again, sets
21 forth the parameters of the areas of inquiry that are
22 appropriate for purposes of Mr. Meredith, who is, at
23 present, an attorney within Midland and for the
24 company.

25 So I can mark that as Exhibit No. 1?

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 Q. How many employees does MRC have?

2 A. MRC Receivables?

3 Q. Yes.

4 A. None.

5 Q. Just some company officers?

6 A. Yes, sir.

7 Q. How many employees does MCM have?

8 A. I don't know the exact number.

9 Q. How many do you think?

10 A. Approximately 300.

11 Q. Okay. Now, tell me what the sales department
12 does?

13 A. On occasions when our debt-buying affiliates
14 acquire debt, it's sometime either advantageous
15 financially for them to sell a portion of the portfolio
16 acquired either at the time of purchase or after it's
17 gone through Midland Credit's collection process, and
18 so we -- Mike Taulbee was formerly in charge of the
19 department, and he would, I guess, go out and locate
20 people who were potentially interested in buying
21 charged-off receivables from our debt-buying
22 affiliates.

23 Q. I think, yesterday, he said he's still there?

24 A. I'm not sure that his official date has -- I
25 mean, I know that he has given notice that he's taking

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 agreed to pay the owner of charged-off indebtedness a
2 certain percentage of money if the obligor on a
3 charged-off account transfers their obligation to a
4 Capital One credit card.

5 Q. Let me try to rephrase it to see if I
6 understand it. If an obligor, under a debt owned by
7 MRC or Midland, allows the balance on that debt to be
8 transferred to a new Capital One credit card, Capital
9 One will pay MRC or Midland some money for receiving
10 that balance transfer?

11 A. Yes. It would pay the owner of the account
12 some percentage of the balance transferred, yes, sir.

13 Q. The owner of the account being MRC?

14 A. Whichever company, yes, sir.

15 Q. We're talking about the Encore family.

16 A. Okay. Well, yeah. I'm not trying to be
17 difficult. I'm just saying that whoever the owner of
18 the account is would receive the money from Capital One
19 to the extent that an account owned by that company is
20 transferred to a credit card.

21 Q. I'm also not trying to be difficult, so what
22 we're talking about is some company within the Encore
23 family?

24 A. Yes, sir.

25 Q. Okay. That's good. What was the concern?

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 been made, then that's when -- that's what triggered
2 the payment from Capital One back to the owner.

3 Q. (By Mr. Latturner) Okay. And after that --

4 A. There were no --

5 Q. -- no Midland company had anything further to
6 do with the debt?

7 A. With the debt that transferred. That's my
8 understanding, yes, sir.

9 Q. Okay. Do you know how the payment was
10 calculated?

11 A. Some percentage based on the face amount
12 transfer or the charged-off balance transferred.

13 Q. Do you know what the percentage is?

14 A. It varied with each deal.

15 Q. Approximately?

16 A. I know that the most current range is
17 approximately nine or ten cents on the dollar.

18 Q. So 9 or 10 percent?

19 A. Yes, sir.

20 Q. Is the program still in effect?

21 A. I don't know whether there's a current
22 engagement in effect right now.

23 Q. Now, the second sentence of that paragraph
24 starts, "If a customer opts out . . ."

25 What is meant by, "if a customer opts out"?

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 Q. Who would the customer be in relationship to
2 Midland?

3 MR. McCONKEY: Object to the form.

4 THE WITNESS: A customer -- well, if Midland
5 owned the debt and Midland then located the obligor of
6 the account and attempted to collect on that account,
7 under the GLB, I believe that individual -- the obligor
8 would be a customer.

9 Q. (By Mr. Latturner) Okay. How is the
10 customer or debtor informed of the balance-transfer
11 program?

12 A. Of the opportunity for the balance transfer?

13 Q. Yes.

14 MR. McCONKEY: Can we get a time frame here
15 so we know when we're talking about?

16 MR. LATTURNER: Well, let's go with the time
17 these memos are being discussed.

18 THE WITNESS: I believe I do, yes, sir.

19 Q. (By Mr. Latturner) Okay.

20 A. A letter is sent from Midland Credit
21 Management, Inc., on behalf of the owner, informing
22 them of the opportunity and asking them, if they're
23 interested, to get ahold of Capital One.

24 Q. Does a letter also come from Capital One?

25 A. Not to my knowledge. I mean, the letter is

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 from, typically, Brandon Black with the MCM logo at the
2 top of it, and so the letter is from Midland Credit.

3 Q. Is it from Brandon Black?

4 A. I believe that's what the letters say, yes,
5 sir. Actually, it may say J. Brandon Black.

6 Q. Okay. Does Midland Credit notify Capital One
7 who they are sending the letters to prior to the
8 mailing?

9 MR. McCONKEY: If you know.

10 THE WITNESS: I believe it's the exact
11 opposite. Capital One informs Midland which of the
12 accounts are eligible for the balance transfer.

13 Q. (By Mr. Latturmer) Okay. So then Midland
14 notifies Capital One that it has certain accounts which
15 they would be willing to put through the
16 balance-transfer program, and then Capital One tells
17 them which one of those they would be willing to accept
18 a balance transfer on?

19 A. Yes, to the extent Midland Credit is the
20 owner of that account that you're referencing.

21 Q. Well, then let's go back and deal with that.
22 You indicated before that the actual owner is MRC but
23 that all of the action is taken by Midland Credit
24 employees; is that correct?

25 A. If, "by all of the action," you mean the

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 transfer of information and sending of letters, yes,
2 sir.

3 Q. Okay. So Midland Credit would be acting on
4 behalf of MRC if MRC was the owner?

5 A. It certainly acts as a servicer for MRC, yes,
6 sir.

7 Q. MRC, you've told me, has no employees?

8 A. Yes, sir.

9 Q. So if any employee did it, it would have to
10 be an employee of Midland Credit?

11 A. Unless -- I mean, I'm not trying to split
12 hairs, but unless it was an officer of MRC who also
13 happened to be an employee of Midland Credit, yes. But
14 typically, yes, all the activities that are conducted
15 are conducted by Midland Credit Management, Inc.

16 Q. So Midland asks Capital One if they want to
17 buy these accounts or have a balance transfer for these
18 accounts, and Capital One says, well, these are the
19 ones we'll take; correct?

20 A. You know, again, not to split hairs, but MCM
21 identifies accounts that are owned by, for example, MRC
22 and says that these MRC accounts may appear to us to be
23 eligible for your program. They are sent by Midland
24 Credit, on behalf of MRC, to Capital One, and then
25 Capital One does whatever it does and then notifies

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 Midland Credit of which accounts are eligible for the
2 letter.

3 Q. Do you know what information either Midland
4 Credit or MRC sends to Capital One when they're
5 offering accounts for a balance transfer?

6 A. Not with any specificity, no.

7 Q. Do you know who would?

8 A. I would assume Lisa Steen would know at least
9 certainly in the recent time frame, S-t-e-e-n.

10 Q. Where is she located?

11 A. San Diego, sir.

12 Q. By the way, to your knowledge, is the
13 practice that you have just described still in effect?

14 A. Which practice?

15 Q. On the balance transfers to Capital One.
16 Still handled the same way?

17 MR. McCONKEY: If you know.

18 THE WITNESS: Yeah, I mean, I have no direct
19 input into the process, so I guess I have no certainty
20 as to whether it's still handled that way, but I
21 believe it is, but I don't know because it's not my
22 job.

23 Q. (By Mr. Latturmer) I think I started to ask
24 you -- no. Well, I started to ask you about the
25 opt-outs, and we identified who opts out. What is the

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1 Q. -- do you recognize that document?

2 A. Yes, sir.

3 Q. And can you tell me what it is?

4 A. It appears to be the privacy notice sent out
5 pursuant to the Gramm Leach Bliley Act.

6 Q. Is there any reference on that document to
7 the Capital One deal?

8 A. Indirectly, yes, sir.

9 Q. What do you mean "indirectly"?

10 A. There's not a mention of Capital One, but
11 there is a mention of joint marketing agreement.

12 Q. Where is that?

13 A. It's in the, "To whom do we disclose
14 information?" It's the last line. It says, "We may
15 disclose all of the information we collect, as
16 described above, to companies that perform marketing
17 services on our behalf or other financial institutions
18 with whom we have joint marketing agreements."

19 I categorize our relationship with Capital
20 One as a marketing agreement.

21 Q. Okay. If you go down to the, "To whom do we
22 disclose information?" section, it says, "We may
23 disclose whether you were a customer or former
24 customer." Do you see that?

25 A. I do see that.

GREGORY G. MEREDITH, SEPTEMBER 28, 2005

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1 During the training programs on the Fair Debt
2 Collection Practices Act, was any training given to
3 account managers as to restrictions as to giving
4 information to third parties?

5 A. With respect to training that I conducted,
6 yes, sir.

7 Q. And how were they instructed?

8 A. They were instructed, as debt collectors, as
9 defined by the Fair Debt Collection Practices Act, that
10 there were certain limited -- there were very limited
11 circumstances under which a debt collector could
12 disclose information to a third party.

13 Q. And did it also include what types of
14 third-party information could be disclosed to?

15 A. I'm sorry. I didn't understand that.

16 Q. Were they trained in the types of third
17 parties that information could be disclosed to or
18 contacts made with?

19 A. Yes, sir, I believe they were.

20 Q. Is Capital One the consumer?

21 MR. McCONKEY: Object to form.

22 THE WITNESS: Is Capital One --

23 Q. (By Mr. Lattuner) In the balance-transfer
24 program, is Capital One the consumer?

25 A. No, sir.

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1 Q. Is Capital One the consumer's attorney?

2 A. Obviously not.

3 Q. Is Capital One a consumer reporting agency?

4 A. It would depend on the context of what
5 they're doing. In the context of a balance-transfer
6 program, I don't know that they would be considered a
7 credit reporting agency.

8 Q. Okay. Before the balance transfer is
9 authorized, is Capital One the creditor?

10 A. No, sir.

11 MR. McCONKEY: To the extent it requires you
12 to develop some sort of an opinion, I'm going to
13 object, but if you can testify factually on the basis
14 of the question as posed, go ahead.

15 Q. (By Mr. Lattuner) Is Capital One the
16 attorney of the creditor?

17 A. Well, as I understand all the terms and where
18 you're going, I do not believe that Capital One would
19 be considered the creditor or the attorney of the
20 creditor.

21 Q. Would Capital One be the attorney of a debt
22 collector?

23 A. No, sir.

24 Q. Now, is it correct to say that the only
25 accounts subject to the Capital One balance-transfer

APPENDIX P

BRIAN L. FRARY SEPTEMBER 27, 2005

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 FRANK N. HERNANDEZ, JR.,

5 Plaintiff,

6 vs.

7 MIDLAND CREDIT MANAGEMENT, INC.;
8 MRC RECEIVABLES CORPORATION; and
9 ENCORE CAPITAL GROUP, INC.,
10 formerly MCM CAPITAL GROUP, INC.,

11 Defendants.

CASE NO. 04-C-7844

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF WISCONSIN
14 MILWAUKEE DIVISION

15 LARRY E. MITCHELL,

16 Plaintiff,

17 vs.

18 MIDLAND CREDIT MANAGEMENT, INC.;
19 MRC RECEIVABLES CORPORATION; and
20 ENCORE CAPITAL GROUP, INC.,
21 formerly MCM CAPITAL GROUP, INC.,

22 Defendants.

CASE NO. 05-C-0024

23 DEPOSITION OF BRIAN L. FRARY
24 San Diego, California
25 Tuesday, September 27, 2005

Reported by: Debby M. Gladish, RPR, CSR No. 9803
Job No. 169107

BRIAN L. FRARY SEPTEMBER 27, 2005

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3 FRANK N. HERNANDEZ, JR.,)

CASE NO. 04-C-7844

4 Plaintiff,)

5 vs.)

6 MIDLAND CREDIT MANAGEMENT, INC.;)
7 MRC RECEIVABLES CORPORATION; and)
8 ENCORE CAPITAL GROUP, INC.,)
formerly MCM CAPITAL GROUP, INC.,)

9 Defendants.)

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WISCONSIN
12 MILWAUKEE DIVISION

13 LARRY E. MITCHELL,)

CASE NO. 05-C-0024

14 Plaintiff,)

15 vs.)

16 MIDLAND CREDIT MANAGEMENT, INC.;)
17 MRC RECEIVABLES CORPORATION; and)
18 ENCORE CAPITAL GROUP, INC.,)
formerly MCM CAPITAL GROUP, INC.,)

19 Defendants.)

20
21 Deposition of BRIAN L. FRARY, taken on behalf
22 of Defendants, at 402 West Broadway, Suite 700, San
23 Diego, California, beginning at 9:00 a.m. and ending at
24 11:04 a.m. on Tuesday, September 27, 2005, before DEBBY
25 M. GLADISH, Certified Shorthand Reporter No. 9803.

1 APPEARANCES:

2 FOR PLAINTIFF FRANK N. HERNANDEZ, JR.:

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6 Suite 2300
7 Chicago, Illinois 60606
8 (312) 627-2169

9 FOR PLAINTIFF LARRY E. MITCHELL:

10 HINSHAW & CULBERTSON
11 BY: CARLOS A. ORTIZ, ESQ.
12 - and -
13 BY: DAVID HANUS, ESQ.
14 100 E. Wisconsin Avenue
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18 (TELEPHONIC APPEARANCE)

19 FOR DEFENDANTS MIDLAND CREDIT MANAGEMENT:

20 EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
21 BY: JAMES O. LATTURNER, ESQ.
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BRIAN L. FRARY SEPTEMBER 27, 2005

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WITNESS

EXAMINATION

BRIAN L. FRARY

BY: MR. LATTURNER

5

EXHIBITS:

MARKED

No. 1 Stipulation and Order Concerning
Privileged Communications

6

No. 2 Document dated 4/20/2004 from
Midland Credit Management, Inc.

39

No. 3 (CONFIDENTIAL EXHIBIT - RETAINED BY
COUNSEL)

53

BRIAN L. FRARY SEPTEMBER 27, 2005

Page 5

1 SAN DIEGO, CALIFORNIA; TUESDAY, SEPTEMBER 27, 2005

2 9:00 A.M.

3 --oOo--

4 MR. LATTURNER: These depositions are taken in
5 two separate cases, Hernandez vs. Midland and Mitchell
6 vs. Midland, which I have given the court reporter the
7 full captions for, and that the depositions and
8 testimony can be used equally in both cases. All right?

9 MR. McCONKEY: I would like to add one thing,
10 if I could, for the record.

11 MR. LATTURNER: Okay.

12 MR. McCONKEY: Mr. Frary is being produced
13 today as corporate counsel of Midland. The parties,
14 prior to today's date, entered into a stipulation
15 relating to testimony of past and current attorneys for
16 Midland. That stipulation was entered as an order by
17 Judge Pallmeyer in the Hernandez case on September 21,
18 2005, and we will be operating under the assumption that
19 the stipulation sets forth the parameters of appropriate
20 inquiry in this deposition.

21 And I would like, unless, Jim, you've already
22 premarked exhibits, I would like to attach, as an
23 exhibit, the stipulation and the order that was entered
24 by Judge Pallmeyer to the transcript.

25 MR. LATTURNER: I have not premarked them, so

1 BY MR. LATTURNER:

2 Q. Who would be?

3 MR. McCONKEY: If you know.

4 THE WITNESS: Probably Rita Melconian.

5 BY MR. LATTURNER:

6 Q. Who's Rita Melconian?

7 MR. LATTURNER: Do you want the name spelled?

8 THE REPORTER: Yes.

9 THE WITNESS: M-e-l-c-o-n-i-a-n.

10 BY MR. LATTURNER:

11 Q. Who's she?

12 A. She's our senior compliance analyst.

13 Q. And who does she work for?

14 A. Midland Credit Management, Inc.

15 MR. McCONKEY: Jim, not to be nitpicky, but
16 previously you defined Midland Credit as MCM. When
17 you're referring to Midland, are you referring to
18 Midland or MCM Credit Management as well?

19 MR. LATTURNER: Okay. Let's say Midland as
20 MCM. So now I will go back and ask the same question.

21 BY MR. LATTURNER:

22 Q. Does MRC have a policy of when third parties
23 may be contacted in the course of collecting a debt?

24 MR. McCONKEY: Same objection.

25 THE WITNESS: MRC does not have any employees

1 with Capital One Bank?

2 MR. McCONKEY: Vague.

3 THE WITNESS: I have a general understanding.

4 I'm not the best person to answer that question.

5 BY MR. LATTURNER:

6 Q. Let me have your general understanding.

7 A. It's my understanding that an offer goes out to
8 MCM customers or consumers, I use the word "consumers,"
9 offering them a chance to get out of their debt and
10 transfer the balance of the debt onto a revolving credit
11 card account.

12 Q. Issued by Capital One?

13 A. Correct.

14 Q. And who sends out that notice?

15 MR. McCONKEY: Objection; foundation.

16 THE WITNESS: It is my understanding that's
17 jointly sent out by Midland and Capital One.

18 BY MR. LATTURNER:

19 Q. And that's one of the methods that Midland uses
20 to collect debts?

21 MR. McCONKEY: Objection; calls for a legal
22 conclusion.

23 THE WITNESS: I think the best way to answer
24 the question is to say that if the consumer accepts,
25 volunteers, to be part of that program that Midland does

1 get paid some amount by Capital One for the customer
2 participating in that balance transfer program. Does
3 that answer your question?

4 BY MR. LATTURNER:

5 Q. Yes. Okay. Now, who would be in the best
6 position to answer the questions concerning the balance
7 transfer program?

8 A. Probably our chief operating officer and
9 president Brandon Black.

10 Q. And in effectuating the balance transfer
11 program, does Midland give information about the
12 consumers who will receive the balance transfer notice
13 or offer from Midland?

14 MR. McCONKEY: I'm sorry.

15 MR. ORTIZ: Objection; foundation.

16 MR. McCONKEY: Vague as well.

17 THE WITNESS: I don't understand your question.

18 MR. LATTURNER: Would you read it back?

19 (Record read.)

20 THE WITNESS: I'm confused.

21 MR. LATTURNER: You're right. I left something
22 out.

23 BY MR. LATTURNER:

24 Q. Does Midland give information about the
25 consumers to Capital One for the purpose of sending a

1 balance transfer notice or offer to the consumer?

2 MR. ORTIZ: Same objection.

3 MR. McCONKEY: Foundation as well.

4 THE WITNESS: I have a general understanding
5 that there is some information about the consumers that
6 is shared with Capital One. I don't know how that
7 happens or what information is involved.

8 BY MR. LATTURNER:

9 Q. So you don't know any of the information that
10 is shared?

11 A. No. Not specifically, no.

12 Q. Have you ever seen a copy of the letter that is
13 sent to the consumers concerning the balance transfer
14 program?

15 A. I have.

16 Q. Does Midland have a copy? Do you have a copy?
17 Do you retain a copy?

18 A. I have come across copies of that letter in
19 cases that I have defended for Midland. I don't know
20 that -- I'm probably not the best person to answer that
21 question. I probably, somewhere in my office, have a
22 copy of a letter that Capital One and Midland have sent
23 to consumers. I don't know that there's only one
24 letter. There may be multiple forms of letters.

25 Q. Who's the best person to answer?

1 A. Probably Lisa Steem, who's the director of our
2 marketing department.

3 Q. S-t-e-e-m?

4 A. Correct.

5 Q. Does Midland receive any compensation from
6 Capital One Bank for participating in this program?

7 MR. McCONKEY: Objection; foundation.

8 MR. ORTIZ: Objection; vague.

9 THE WITNESS: I have a general understanding.
10 I don't know specifically.

11 BY MR. LATTURNER:

12 Q. What is the general understanding?

13 A. My general understanding is that once the
14 consumer agrees to the terms of the Capital One program
15 and the balance transfer is effectuated and the card is
16 issued, that some monies are paid to Midland.

17 Q. Are additional monies paid as the consumer pays
18 the balance that's transferred to Capital One?

19 MR. McCONKEY: Same objection.

20 THE WITNESS: Generally, my understanding is
21 that after the consumer makes the first monthly payment
22 on the revolving credit card account that a lump sum of
23 some sort is paid to Midland. That's the only money
24 that's sent to Midland from Capital One regarding that
25 account.

1 BY MR. LATTURNER:

2 Q. And would that lump sum be a percentage of the
3 balance that was transferred?

4 A. Yes.

5 Q. Do you know approximately what percentage?

6 A. I do not.

7 Q. Do you know who would?

8 A. Brandon Black.

9 Q. If you go back to the paragraph just below the
10 two bullet points under "To Whom Do We Disclose
11 Information?" the one that starts, "We may disclose
12 nonpublic personal information about you" --

13 A. Correct.

14 Q. -- it refers in that, can go to companies that
15 process financial products or services.

16 A. I don't see that.

17 Q. Do you know what the companies that process
18 financial products or services are?

19 A. I don't see that. Can you show it to me?

20 Q. It's the middle of the second line.

21 A. Oh, this one.

22 MR. McCONKEY: Objection; foundation.

23 If you know.

24 THE WITNESS: I don't know specifically.

25 BY MR. LATTURNER:

APPENDIX Q

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IRENE CHAPMAN,)	
)	
Plaintiff,)	
)	
v.)	No. 04 C 7625
)	
WORLDWIDE ASSET MANAGEMENT,)	
L.L.C. and WORLDWIDE ASSET)	
PURCHASING, L.L.C.)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Plaintiff Irene Chapman alleges that a notice she received regarding defendants' privacy policy--that is defendants' policy regarding sharing information about plaintiff--was part of an attempt to collect a debt. Plaintiff contends that statements in the privacy policy violate provisions of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq. Plaintiff brings this action as a putative class action. Defendants Worldwide Asset Management, L.L.C. ("WAM") and Worldwide Asset Purchasing, L.L.C. ("WAP") move to dismiss the complaint.

On a Rule 12(b)(6) motion to dismiss, a plaintiff's well-pleaded allegations of fact are taken as true and all reasonable inferences are drawn in the plaintiff's favor.

Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 164 (1993); Dixon v. Page, 291 F.3d 485, 486 (7th Cir. 2002); Stachon v. United Consumers Club, Inc., 229 F.3d 673, 675 (7th Cir. 2000). A complaint need not set forth all relevant facts or recite the law; all that is required is a short and plain statement showing that the party is entitled to relief. Fed. R. Civ. P. 8(a)(2); Boim v. Ouranic Literacy Institute, 291 F.3d 1000, 1008 (7th Cir. 2002); Anderson v. Simon, 217 F.3d 472, 474 (7th Cir. 2000), cert. denied, 531 U.S. 1073 (2001); Scott v. City of Chicago, 195 F.3d 950, 951 (7th Cir. 1999). A plaintiff in a suit in federal court need not plead facts; conclusions may be pleaded as long as the defendants have at least minimal notice of the claim. Fed. R. Civ. P. 8(a)(2); Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002); Scott, 195 F.3d at 951; Albiero v. City of Kankakee, 122 F.3d 417, 419 (7th Cir. 1997); Jackson v. Marion County, 66 F.3d 151, 153-54 (7th Cir. 1995). Even if not required to plead specific facts, a plaintiff can plead himself or herself out of court by alleging facts showing there is no viable claim. See Slaney v. The International Amateur Athletic Federation, 244 F.3d 580, 597 (7th Cir.), cert. denied, 534 U.S. 828 (2001); Kauthar SDN BHD v. Sternberg, 149 F.3d 659, 669-70 n.14 (7th Cir. 1998), cert. denied, 525 U.S. 1114 (1999); Jackson, 66 F.3d at 153-54. Ordinarily, as long as they are consistent with the allegations of the complaint, a plaintiff may assert additional

facts in his or her response to a motion to dismiss. Brokaw v. Mercer County, 235 F.3d 1000, 1006 (7th Cir. 2000); Forseth v. Village of Sussex, 199 F.3d 363, 368 (7th Cir. 2000); Albiero, 122 F.3d at 419; Gutierrez v. Peters, 111 F.3d 1364, 1367 n.2 (7th Cir. 1997). Also, documents that are referred to in the complaint and that are central to a claim that is made may be considered to be part of the complaint even if not actually attached to the complaint. Rosenblum v. Travelbyus.com Ltd., 299 F.3d 657, 661 (7th Cir. 2002); Duferco Steel Inc. v. M/V Kalisti, 121 F.3d 321, 324 n.3 (7th Cir. 1997); Venture Associates Corp. v. Zenith Data Systems Corp., 987 F.2d 429, 431 (7th Cir. 1993). Where the document may properly be considered, the actual document will override inconsistent descriptions of the document alleged in the body of the complaint. See Rosenblum, 299 F.3d at 661 (quoting 5 Wright & Miller, Federal Practice & Procedure: Civil 2d § 1327 at 766 (1990)); In re Wade, 969 F.2d 241, 249 (7th Cir.1992); Beam v. IPCO Corp., 838 F.2d 242, 244-45 (7th Cir. 1988).

In the complaint itself, it is unnecessary to specifically identify the legal basis for a claim as long as the facts alleged would support relief. Forseth, 199 F.3d at 368; Scott, 195 F.3d at 951; Albiero, 122 F.3d at 419; Bartholet v. Reishauer A.G. (Zurich), 953 F.2d 1073, 1078 (7th Cir. 1992); Dodaro v. Village of Glendale Heights, 2003 WL 1720030 *8 (N.D. Ill. March 31, 2003). A plaintiff is not bound by legal

characterizations of the claims contained in the complaint. Forseth, 199 F.3d at 368; Kirksey v. R.J. Reynolds Tobacco Co., 168 F.3d 1039, 1041 (7th Cir. 1999). However, in response to a motion to dismiss that raises the issue, the plaintiff must identify a legal basis for a claim and make adequate legal arguments in support of it. Kirksey, 168 F.3d at 1041-42; Stransky v. Cummins Engine Co., 51 F.3d 1329, 1335 (7th Cir. 1995); Levin v. Childers, 101 F.3d 44, 46 (6th Cir. 1996); Gilmore v. Southwestern Bell Mobile Systems, L.L.C., 224 F. Supp. 2d 1172, 1175 (N.D. Ill. 2002).

Plaintiff alleges that "WAM purchases for collection defaulted consumer receivable accounts" and that "[t]he principal business purpose of WAM is the purchase and collection of consumer debts by the use of the mail and telephone." It is also alleged that WAM "directs, controls and is actively involved in the business affairs of WAP." It is claimed that WAM is a debt collector as defined by the FDCPA, 15 U.S.C. § 1692a(6). It is alleged that WAP's "principal purpose . . . is the collection of defaulted consumer debts by the use of the mail and telephone." WAP is also claimed to be a debt collector as defined by the FDCPA.

Plaintiff alleges that, during 2003 and 2004, she received a series of collection letters sent by or on behalf of WAM and WAP. The letters pertained to an alleged credit card debt. Along with one or more of the collection letters,

plaintiff received a document entitled "Worldwide Asset Management, L.L.C. Privacy Policy and Notice."¹ The notice states that "[w]e collect nonpublic personal information about you including . . . Information we receive from you on applications or other . . . documents; Information about your transactions with us . . . or others; and Information we receive from a consumer reporting agency." It is further stated that "we" may disclose this information to third parties, including financial service providers, retailers, and direct marketers. "We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law." It is also stated that, in order to prevent such disclosure, the addressee must complete and mail in a form requesting to opt out.

The title of the privacy notice includes WAM, but not WAP. The opt out form is to be sent to WAM. The first two sentences of the privacy notice state: "Worldwide Asset Management, L.L.C., as master servicing agent for Worldwide Asset Purchasing, L.L.C. and in conformity with the Gramm-Leach-Bliley Act, has adopted a Privacy Policy to protect information that we have about our customers. This notice is to provide you with a description of our privacy policy."

WAP argues that it cannot be held responsible for the privacy policy notice because the title and mailing address for

¹A copy of the privacy notice is attached to the Complaint.

opt outs show that the notice is a document from WAM, not WAP. WAP ignores that the beginning sentences of the notice describe a policy of both WAM and WAP. The notice also states that WAM is acting as an agent for WAP.² The privacy notice itself does not conclusively establish that the notice was sent by WAM and that it was solely on behalf of WAM. The language of the notice is such that it could have been sent by or on behalf of either or both defendants. Therefore, on defendants' motion to dismiss, the allegations of the complaint that both defendants are responsible for the notice must presently be taken as true.

Plaintiff's allegation that the privacy policy notice was sent along with a collection letter or other communication attempting to collect a debt must also be taken as true. That allegation is fully consistent with the notice itself which states in capitalized boldface letters: "Federal law requires us to advise you that this is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector."

Defendants also argue that neither defendant is adequately alleged to be a debt collector, particularly WAP, which purchases debts. Plaintiff, however, alleges that both

²In the body of the Complaint, it is alleged that WAM controls and directs WAP, thereby indicating that WAP is an agent of WAM. In her answer brief, plaintiff argues, based on the language of the privacy notice, that WAM is an agent of WAP. In ruling on the motion to dismiss, it is unnecessary to resolve issues regarding principal-agent liability under the FDCPA.

defendants are in the business of collecting debts. WAM is alleged to both purchase and collect debts. There is no allegation that WAP purchases debts. Moreover, since plaintiff pleads no specific facts to the contrary, it is sufficient that plaintiff alleges that they are in the business of collecting debts. Molloy v. Primus Automotive Financial Services, 247 B.R. 804, 821 (C.D. Cal. 2000). Compare Montgomery v. Huntington Bank, 346 F.3d 693, 701 (6th Cir. 2003). Even the conclusorily allegations that both defendants are debt collectors as defined by the FDCPA would have been sufficient absent specific allegations to the contrary. See McCormick v. City of Chicago, 230 F.3d 319, 324-25 (7th Cir. 2000); Jackson, 66 F.3d at 153. But see Montgomery, 346 F.3d at 701 (6th Cir.). Furthermore, an entity that purchases the debts of others when the debts are already in default may qualify as a debt collector. See Schlosser v. Fairbanks Capital Corp., 323 F.3d 534, 536-37 (7th Cir. 2003). It has been sufficiently alleged that defendants are debt collectors.

Defendants contend the privacy policy notice cannot constitute a violation of the FDCPA because it is in conformity with the Gramm-Leach-Bliley Act ("GLB"), 15 U.S.C. § 6801 et seq., which generally applies to disclosure of customer information by financial institutions. They also argue that there can be no violation of the FDCPA because it is not alleged that any actual disclosure of plaintiff's information occurred.

It is true that the Complaint does not expressly allege any actual disclosure, though such an allegation would not be inconsistent with the allegations of the complaint. In response to the motion to dismiss, however, plaintiff still does not contend there was any actual disclosure. Instead, plaintiff argues that the threat of a possible disclosure was sufficient to constitute a violation of the FDCPA. Plaintiff relies on 15 U.S.C. §§ 1692e(5) & (10). Those subsections provide:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

Since the privacy policy notice was part of an attempt to collect a debt from plaintiff, representations therein that defendants would take actions prohibited by the FDCPA would themselves constitute a violation of the FDCPA regardless of whether defendants thereafter actually engaged in such conduct. Blair v. Sherman Acquisition, 2004 WL 2870080 *6-7 (N.D. Ill. Dec. 13, 2004); Stewart v. Asset Acceptance LLC, No. 04 CV 1213, 6-8 (S.D. Ind. Nov. 19, 2004).

Except as permitted by sections 1692c(b) and 1692b, a debt collector may not communicate with a third party regarding a consumer's debt. The privacy policy notice states that defendants will engage in communications other than the type permitted by the aforementioned sections of the FDCPA.³ Also, inconsistent with the FDCPA provisions which require that the debt collector obtain actual permission from the customer before disseminating certain information, the privacy policy provides that the customer must affirmatively act to prevent dissemination. Defendants' privacy policy contains provisions that would violate the FDCPA. Blair, 2004 WL 2870080 at *3-4; Stewart, supra, at 6-8. As previously discussed, by seeking to collect on a debt while notifying plaintiff that they may take such actions, defendants violated § 1692e. Blair, 2004 WL 2870080 at *6-7; Stewart, supra, at 6-8.

Defendants contend there can be no violation of the FDCPA because the dissemination of such information and the opt-out requirement are consistent with the GLB. Just because conduct does not violate one statute does not automatically mean that the

³Defendants contend there is no violation because they added the qualification that they would only disclose "as permitted by law." That qualification, however, is only stated to apply to disclosures to "nonaffiliated third parties." Moreover, an unsophisticated consumer is not expected to know there is a law that prevents defendants from performing the disclosures they otherwise indicate they will perform. This qualification does not prevent a violation of § 1692e. See Blair, 2004 WL 2870080 *6-7.

conduct does not violate other statutes. Defendants point to no reason why the GLB should be considered to have amended the FDCPA so as to delete some of its provisions. The FDCPA pertains specifically to communications related to debt collecting; the GLB does not. There is no basis for holding that the previously discussed provisions of the FDCPA are inapplicable to the privacy policy notice sent by defendants.

Plaintiff has adequately alleged a violation of the FDCPA.

IT IS THEREFORE ORDERED that defendants' motion to dismiss [7] is denied. Within 14 days, defendants shall answer the complaint. Within 30 days, plaintiff shall move for class certification.

ENTER:



UNITED STATES DISTRICT JUDGE

DATED: APRIL , 2005

APPENDIX R

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FRANK N. HERNANDEZ, JR.,)	
)	
Plaintiff,)	No. 04 C 7844
)	
v.)	Judge Rebecca R. Pallmeyer
)	
MIDLAND CREDIT MANAGEMENT, INC.;)	Magistrate Judge Sidney I. Schenkier
MRC RECEIVABLES CORPORATION; and)	
ENCORE CAPITAL GROUP, INC.,)	
f/k/a MCM CAPITAL GROUP, INC.,)	
)	
Defendants.)	

STIPULATION

Frank N. Hernandez, Jr., the plaintiff in Case No. 04 C 7844 in the United States District Court for the Northern District of Illinois, hereby stipulates and agrees with the defendants Midland Credit Management, Inc. ("MCM"), MRC Receivables Corporation ("MRC"), and Encore Capital Group, Inc., f/k/a MCM Capital Group, Inc. ("Encore"), the parties acting by and through their counsel as indicated by the signatures below, for the sole purposes of the aforesaid action (the "Subject Action") only, as follows:

1. As of this date, if a class(es) is certified in the above action and if the plaintiffs prevail on liability against either or both MCM and Encore, the net worth of either Defendant MCM or Encore is sufficient so that the statutory maximum total amount of damages of \$500,000, in the Subject Action may be awarded. Any judgment in the Subject Action shall not exceed a total of \$500,000 for the class under 1692k(a)(2)(B)(ii). For purposes of this Subject Action and the "resources" of the debt collector under Section 813k(b)(2) of the Fair Debt Credit Collection Practices Act, 15 U.S.C. §1692k(b)(2), Defendants stipulate that their combined resources exceed Fifty Million Dollars (\$50,000,000.00).

2. MCM and Encore represent and stipulate that the Subject Action is currently being defended under a Chubb PROE&O ("Chubb") Policy Number 6801-8104, issued by Executive Risk Indemnity Inc., with limits of liability inclusive of defense costs of \$5,000,000 per each wrongful act and \$5,000,000 aggregate, as reflected in the Declaration Page of said Policy, a copy of which has been previously provided to the plaintiffs herein.

3. In exchange for this Stipulation, Plaintiffs agree to dismiss MRC from this lawsuit with prejudice.

4. At any point in the Subject Action, neither MCM nor Encore shall use the absence of the owner of the debt as a defense to the plaintiffs' alleged claims or against class certification.

5. There shall be no discovery undertaken in the Subject Action with regard to the net worth of the Defendants and/or of any of the Defendants' corporate affiliates or subsidiaries. Furthermore, there shall be no discovery undertaken with regard to the financial relationship between and among the Encore Capital Group, Inc., Defendant MCM, Defendant MRC and/or any other entities owned by Encore Capital Group, Inc. or subsidiaries or affiliates thereof. However, this stipulated limitation on discovery applies only to pre-judgment discovery. In the event that a judgment is entered, Plaintiffs may take whatever post-judgment discovery is allowable under the law in order to collect on the judgment.

6. Subject to ¶ 4 above, Defendants do not waive any argument or position that a class should not be certified in the Subject Action or that the defendants are not liable. Subject to ¶ 4 above, Defendants may continue to present all available defenses in the Subject Action. Defendants may argue that the class(es) should not be awarded any damages, and/or that the class(es) should be awarded less than the maximum amount allowed under this Stipulation.

7. This Stipulation can only be used in the Subject Action and cannot be used for any other purpose or in any other case.

8. By entering into this Stipulation, neither the plaintiffs nor the defendants are making any admissions, the defendants continue to deny any liability whatsoever, and the plaintiffs continue to assert that defendants violated the FDCPA.

s/ Derek B. Rieman

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